
OLR Bill Analysis

SB 351 (File 277, as amended by Senate "A")*

AN ACT CONCERNING CERTAIN CEMETERY EROSION MITIGATION EFFORTS WITHIN THE COASTAL BOUNDARY.

SUMMARY:

This bill adds cemetery and burial grounds to the list of land uses that can be protected by structural solutions within the coastal boundary.

The bill requires the Department of Energy and Environmental Protection (DEEP) commissioner to conduct a hearing at an applicant's request on an application for a (1) water quality certification under the federal Water Pollution Control Act (WPCA) and (2) permit to conduct certain activities in tidal, coastal, or navigable waters below the high tide line, under certain circumstances. The bill allows any person aggrieved by the DEEP commissioner's final decision on these applications to appeal to Superior Court.

It also makes technical changes.

*Senate Amendment "A" adds the provisions (1) requiring the DEEP commissioner to hold a hearing on certain applications when an applicant requests one and (2) allowing any aggrieved person to appeal a final decision.

EFFECTIVE DATE: October 1, 2012, except the provision concerning cemetery and burial ground protection, which is effective upon passage.

CEMETERY AND BURIAL GROUNDS

The bill allows the use of structural solutions to protect a cemetery or burial grounds in the coastal boundary.

By law, it is state policy in the coastal boundary for federal, state,

and municipal agencies to (1) maintain the natural relationship between eroding and depositional coastal landforms and (2) minimize the adverse effects of erosion and sedimentation by promoting nonstructural mitigation measures.

But current law allows structural solutions to erosion and sedimentation's adverse effects, such as retaining walls, when necessary and unavoidable to protect (1) infrastructural facilities, (2) water-dependent uses, and (3) existing inhabited structures. There must be no feasible, less environmentally damaging alternative, and all reasonable mitigation measures and techniques must have been taken to minimize adverse environmental impacts.

APPLICATION HEARINGS

Water Quality Certification

The bill allows an applicant for a water quality certification under Section 401 of the federal WPCA to request a hearing on the application within 30 days of the date the DEEP commissioner (1) publishes notice of its tentative determination or (2) causes it to be published. It requires the DEEP commissioner to hold a hearing if the applicant's request is timely and in writing.

Activity in Tidal, Coastal, or Navigable Waters

The bill also requires the DEEP commissioner to hold a public hearing on an application to conduct certain regulated activities in tidal, coastal, or navigable waters below the high tide line if the applicant requests one in writing. By law, DEEP regulates dredging, erecting structures, placing fill, and related work in such waters.

Existing law allows the DEEP commissioner to hold a public hearing if he determines it is in the public interest. He must hold one if he receives a petition signed by at least 25 people requesting one and the application will (1) significantly affect a shellfish area, (2) have interstate ramifications, or (3) require a certificate of environmental compatibility and public need or approval from the Federal Energy Regulatory Commission.

BACKGROUND***Coastal Boundary***

By law, the “coastal boundary” is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot setback from the mean high-water mark, or (3) a 1,000-foot setback from the inland boundary of the tidal wetlands (CGS § 22a-94(b)).

Water Pollution Control Act

The federal Water Pollution Control Act (33 USC § 1251 et seq.), also known as the Clean Water Act, is aimed at restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. Under Section 401 of the act, applicants for certain federal licenses or permits must obtain a certification from the state that the proposed activity is consistent with its water quality standards.

Tentative Determination

By law, the DEEP commissioner must publish or cause publication of a notice of tentative determination at least 30 days before approving or denying certain applications, including applications for WPCA water quality certifications and permits to conduct certain regulated activities in tidal, coastal, or navigable waters below the high tide line (CGS §§ 22a-6h and 22a-361).

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 28 Nay 0 (03/21/2012)

Planning and Development Committee

Joint Favorable

Yea 19 Nay 0 (04/16/2012)